

Claimant is employed as a production supervisor on the production line where cuts of meat such as chucks, tenders, and briskets are cut from larger portions of meat. Claimant not only supervises production employees but also performs manual labor requiring her to lift, pull, and pick up and transfer tubs of product weighing anywhere from

70-75 pounds.

For approximately three years before March 15, 2001, claimant had experienced pain and soreness on occasion at work in her neck, shoulders, arms and hands. When claimant would experience symptoms she would go to the respondent's nurse's station and the nurse would treat those symptoms with massage, ointment, and aspirin for the pain.

On March 15, 2001, claimant was showing her employees a piece of meat product that weighed not more than 5 pounds. As she lifted the meat product, she felt a sharp pain in her chest area and she had a difficult time breathing. Because the pain was in her chest area, claimant immediately thought that she was having heart problems. She went to the nurse's station and was then transported by ambulance to the local hospital. Claimant was kept over night for various tests that were negative for any heart problems.

But claimant continued to have pain and the pain spread to her right side of her neck, right shoulder and down her right arm. Claimant was then referred to the Garden City Medical Clinic and was seen by Dr. Terry R. Hunsberger and Dr. John J. Shonk. They treated claimant conservatively with physical therapy, medication, and injections. Claimant was taken off work. Because claimant did not improve, she was referred to neurosurgeon John P. Gorecki, M.D., in Wichita, Kansas.

Dr. Gorecki diagnosed claimant with cervical myelopathy secondary to C5-6 disc herniation compressing the spinal cord. On June 11, 2001, Dr. Gorecki operated on claimant performing an anterior cervical discectomy and fusion at C5-6 with allograft bone. In response to questions imposed by claimant's attorney in a letter dated July 31, 2001, Dr. Gorecki opined, based on reasonable medical certainty, that claimant's cervical herniated disc was either caused, aggravated or exacerbated by the work activities she performed while working for the respondent.

The Board concludes, at this stage of the proceedings, it is more likely than not that claimant's work activities either caused, aggravated, or exacerbated claimant's cervical herniated disc. This conclusion is supported by claimant's testimony that she had experienced intermittent pain and discomfort in her neck, shoulder, and arms for the last three years while performing her regular work activities for respondent. That pain and discomfort was treated on a regular basis by respondent's nurses. Additionally, Dr. Gorecki, claimant's treating physician, also relates claimant's cervical herniated disc to her work activities.

In regard to the timely notice issue, the Board concludes it is significant that claimant sought treatment for pain and discomfort in her neck, shoulders, and arms over the last three years before the March 15, 2001, incident. Also, the Board concludes that it is significant that respondent was notified through claimant's treating physician's notes and records that she did not have heart problems on March 15, 2001, and then received continued treatment for neck, shoulder, and arm pain.

Respondent had its nurse's manager, Rhonda Shipley, testify at the preliminary hearing. Ms. Shipley testified that employees are treated on a regular basis at the nurse's station for symptoms in their neck, shoulders and upper extremity. Additionally, Ms. Shipley testified that when employees are treated for those type of symptoms there is an assumption those problems are related to their work unless advised otherwise.

Although claimant or respondent did not know the specific diagnosis for claimant's injuries until some time in May 2001, it was known that claimant's work was causing her to have neck, shoulder, and upper extremity discomfort before the March 15, 2001, incident. K.S.A. 44-520 requires claimant to report accidents not injuries. Notice pursuant to K.S.A. 44-520 does not require claimant to have an understanding of the specific diagnosis of her pain and discomfort caused by her work activities. When claimant went to the respondent's nurse's station to report pain and discomfort in her neck, shoulders, and upper extremities and receive treatment for that pain and discomfort, as indicated by Ms. Shipley, the nurses assumed that the pain and discomfort was related to the work claimant was performing for respondent. Therefore, timely notice of accident was given.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the ALJ Pamela J. Fuller's August 22, 2001, preliminary hearing Order for Compensation should be, and is hereby, affirmed.

### **IT IS SO ORDERED**

Dated this \_\_\_\_ day of October, 2001.

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BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant  
Wendel Wurst, Attorney for Respondent  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director of Workers Compensation